

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DANIEL BLACK,

Plaintiff,

v.

Civil Action No. 2:17-cv-00156

DAVID A. CLARKE, JR.,

Defendant.

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**PLAINTIFF'S REQUEST FOR LEAVE TO FILE AMENDED  
PROPOSED SUBSTANTIVE JURY INSTRUCTION**

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Plaintiff, by this attorney Anne T. Sulton of Sulton Law Offices, hereby respectfully requests this honorable Court for leave to file the attached amended proposed substantive jury instruction. There are two reasons for this request.

First, there is some unnecessary redundancy in the previously proposed instruction. The proposed amendment removes this redundancy.

Second, the proposed amendment clearly states the legal basis for Plaintiff's claim as set forth in the Court's Order on Defendant's motion for summary judgment, at docket # 39, pages 18-20. Of note, at page 19, the Court states that "the defendants do not contest that Black engaged in protected speech or that Clarke's posts were motivated thereby. See (Docket #29 at 12). The only question, then, is whether Clarke's Facebook posts would deter a person of ordinary firmness from exercising his First Amendment rights."

In this Order, the Court correctly states the three elements Black must prove, writing at the top of page 14 of the Order at docket #39:

To prevail on a First Amendment retaliation claim, the plaintiff must show that “(1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was at least a motivating factor in the defendant’s decision to take the retaliatory action.”

Respectfully submitted this 18<sup>th</sup> day of January, 2018.

**s/Anne T. Sulton**

Anne T. Sulton, Ph.D., J.D.

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## CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Wisconsin by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

**s/Anne T. Sulton**

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